

United States District Court
for the
Eastern District of ArkansasAPR -1 2009
By: *James W. McCormack, Clerk*
DEP CLERKRequest for Modifying the Conditions or Term of Supervision
with Consent of the Offender
(Probation Form 49, Waiver of Hearing is Attached)

Name of Offender: Benjamin Lusby

Case Number: 4:08CR00072-01 JLH

Name of Sentencing Judicial Officer: Honorable James D. Todd
United States District JudgeFebruary 15, 2008: Jurisdiction accepted in the Eastern
District of Arkansas by the Honorable J. Leon Holmes
Chief United States District Judge

Offense: Convicted felon in possession of a firearm

Date of Sentence: March 2, 2005

Sentence: 36 months Bureau of Prisons, 3 years supervised release, drug testing,
substance abuse treatment, DNA testing and \$100 special penalty assessmentRevoked November 10, 2008: 48 hours custody of the Bureau of Prisons,
supervised release to terminate on July 27, 2009, drug testing, substance
abuse treatment and DNA testing.Type of Supervision: Supervised Release Date Supervision Commenced: July 28, 2006
Expiration Date: July 27, 2009

Asst. U.S. Attorney: Jana Harris Defense Attorney: Jerome Kearney

U.S. Probation Officer: Dwayne M. Ricks
Phone No.: 501-604-5273

PETITIONING THE COURT

To modify the conditions of supervision as follows:

**The defendant will reside at and participate in a residential re-entry center until his term
of supervised release expires on July 27, 2009.**

CAUSE

On May 7, 2008, a revocation hearing was held as a result of being convicted of theft of property,
testing positive for marijuana and failure to respond to code-a-phone as instructed for drug testing. Mr.
Lusby was directed by the Court to go to residential treatment to be followed by chem-free living. On
May 29, 2008, Mr. Lusby was admitted into the residential substance abuse treatment program at

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Recovery Centers of Arkansas. On September 27, 2008, Mr. Lusby was terminated from chem-free living at Recovery Centers of Arkansas for failure to pay his rent. However, he continued to participate in their outpatient substance abuse treatment program. On October 14, 2008, Mr. Lusby failed to attend his individual counseling session at Recovery Centers of Arkansas. On November 7, 2008, another revocation hearing was held due to Mr. Lusby's continued drug use, failure to attend his scheduled group sessions at Recovery Centers of Arkansas and being discharged from the chem-free living program at Recovery Centers of Arkansas. Mr. Lusby's term of supervised release was revoked and he was sentenced to 48 hours custody of the Bureau of Prisons and his previous conditions of supervised release were reimposed, including the termination date of July 27, 2009. On November 12 and 26, 2008, Mr. Lusby failed to attend his group counseling sessions at Recovery Centers of Arkansas. On December 5, 2008, Mr. Lusby reported to Pulaski County Detention Facility to begin serving his 48 hours prison term as ordered by the Court, which he completed on December 6, 2008. On January 25; and March 2 and 24, 2009, Mr. Lusby signed three admission of drug use forms indicating he had used marijuana. On March 24, 2009, Mr. Lusby tested positive for opiates, but he attributed this positive to prescribed medication (hydrocodone) he was taking after undergoing gall bladder surgery. Mr. Lusby also failed to respond to code-a-phone as instructed for drug testing on November 25; December 5, 10, and 15, 2008; January 8 and 14; and February 9, 17, and 23, 2009.

On March 24, 2009, Mr. Lusby signed the attached Prob 49 waiving his right to a hearing and agreeing to modify his conditions to reside in a residential re-entry center until his term of supervised release expires on July 27, 2009. Mr. Lusby's attorney, Jerome Kearney, has agreed to the modification.

Rebecca Fifer for

Dwayne M. Ricks
U.S. Probation Officer

Date: 3/25/09

Jana Harris

Jana Harris
Assistant U.S. Attorney

Date: 3-30-09

This form is to be filed with Criminal Docketing as a motion.

THE COURT ORDERS:

- No Action
- The Extension of Supervision as Noted Above
- The Modification of Conditions as Noted Above
- Other

J. Fifer
Signature of Judicial Officer

Apr 1, 2009
Date

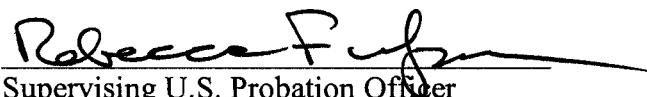
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This form is to be filed with Criminal Docketing as an order and/or petition.

Approved:



Supervising U.S. Probation Officer

DMR/khm

c: Assistant Federal Public Defender, Jerome Kearney, 1401 West Capitol Avenue, Suite 490,
Little Rock, AR 72201
Assistant U.S. Attorney, Jana Harris, P.O. Box 1229, Little Rock, AR 72203

PROB 49

Waiver of Hearing to Modify Conditions
of Probation/Supervised Release or Extend Term of Supervision

UNITED STATES DISTRICT COURT
for the
EASTERN DISTRICT OF ARKANSAS

I have been advised and understand that I am entitled by law to a hearing and assistance of counsel before any unfavorable change may be made in my Conditions of Probation and Supervised Release or my period of supervision being extended. By 'assistance of counsel', I understand that I have the right to be represented at the hearing by counsel of my own choosing if I am able to retain counsel. I also understand that I have the right to request the Court to appoint counsel to represent me at such a hearing at no cost to myself if I am not able to retain counsel of my own choosing.

I hereby voluntarily waive my statutory right to a hearing and to assistance of counsel. I also agree to the following modification of my Conditions of Probation and Supervised Release or to the proposed extension of my term of supervision:

The defendant will reside at and participate in a residential re-entry center until his term of supervised release expires on July 27, 2009.

Witness: Dwayne Kirk
U.S. Probation Officer

Signed: Ben Lundy
Probationer or Supervised Releasee

3-24-09

DATE